

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HOUSTON CASUALTY COMPANY, a  
foreign insurer,

Plaintiff,

vs.

INSPIRIT ATHLETICS, INC., a Washington  
Corporation, d/b/a STERLING ATHLETICS;  
JACOB JACKSON, an individual; JOHN DOE  
1, an individual; JOHN DOE 2, an individual,  
and JANE DOE, an individual,

Defendants.

No.

**COMPLAINT FOR DECLARATORY  
RELIEF**

The Plaintiff Houston Casualty Company (“HCC”) by and through their counsel of record, Ryan J. Hesselgesser and Kara Tredway of Forsberg & Umlauf, P.S., allege as follows:

**I. PARTIES**

1.1 Plaintiff Houston Casualty Company is incorporated in and has its principal place of business in Texas.

1.2 Defendant Inspirit Athletics, Inc. d/b/a Sterling Athletics (“Sterling”) is a Washington Corporation incorporated in the State of Washington with its principal place of business in Washington.

COMPLAINT FOR DECLARATORY RELIEF- 1  
CAUSE NO.

3406954 / 539.0022

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1       1.3   Defendant Jacob Jackson is an individual who is a resident of the state of  
2 Washington.

3       1.4   Defendants John Doe 1, John Doe 2, and Jane Doe are individuals who are  
4 residents of the state of Washington.

## 5                   **II. JURISDICTION AND VENUE**

6       2.1   This is an action for declaratory relief pursuant to 28 U.S.C. § 2201 and Federal  
7 Rules of Civil Procedure, rule 57 to resolve an actual controversy between the parties as set forth  
8 herein.

9       2.2   This court has diversity jurisdiction under 28 USC§ 1332, because there is  
10 complete diversity of citizenship between plaintiff and defendants, and the amount at issue  
11 exceeds \$75,000. Sterling seeks insurance coverage under policies of insurance issued by  
12 plaintiff with limits exceeding \$1,000,000.

13      2.3   Venue is proper under 28 USC§ 128 (a), because the western district of  
14 Washington encompasses Pierce County, where the underlying lawsuit is pending.

## 15                   **III. FACTS**

### 16                  **A. Underlying Lawsuit**

17      3.1   On or about October 19, 2022 Defendants John Doe 1, John Doe 2, Jane Doe filed  
18 a lawsuit against Defendant Sterling and Jacob Jackson in Pierce County under cause number:  
19 22-2-09631-0 (“Underlying Lawsuit”).

20      3.2   The Underlying Lawsuit alleges that Jacob Jackson is the CEO of Sterling  
21 Athletics. The complaint further alleges that in his role as CEO Jackson has control over every  
22 single aspect of the company, including but not limited to hiring, operations, company finances,  
23 marketing, and strategy development.

COMPLAINT FOR DECLARATORY RELIEF– 2  
CAUSE NO.

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1       3.3     The complaint further alleges that Jackson was also the head boys' basketball  
2 coach for Sumner High School from 2016 to September 2022.

3       3.4     The underlying lawsuit alleges that Jackson first met John Doe 1 in the summer of  
4 2017 when John Doe 1 was a minor student athlete and that Jackson began communicating  
5 extensively with John Doe 1 through Jackson's Sterling Athletics' cell phone via texting,  
6 Snapchat and Instagram.

7       3.5     The Complaint alleges that Jackson continued to communicate with John Doe 1 as  
8 John Doe 1 transitioned from middle school to high school. This included provided gifts to John  
9 Doe 1 from Sterling Athletics, including free basketball equipment, gear, and custom apparel, as  
10 well as basketball shoes and envelopes of cash.

11       3.6     The Complaint further alleges at or around this time, Jackson asked John Doe 1 if  
12 he would be interested in working at Sterling Athletics' warehouse to earn extra money and gain  
13 experience.

14       3.7     The Underlying Complaint alleges that John Doe 1 accepted the offer and started  
15 working in the Sterling Athletics' factory whenever he had availability. John Doe 1 was paid in  
16 cash after each shift or issue a check from Sterling Athletics' operating account.

17       3.8     The Underlying Complaint alleges that after John Doe 1 began working at  
18 Sterling Athletics, Jackson began messaging John Doe 1 about sexual topics and sending pictures  
19 showing Jackson urinating, his abdominal muscles, and his penis.

20       3.9     The Underlying Complaint further alleges that in the Summer of 2020, Jackson  
21 invited John Doe 1 over to his home to help with yard work. Eventually this resulted in an  
22 incident where Jackson cornered John Doe 1 in his bedroom naked and exposed himself to John  
23 Doe 1 while engaging in sexual conduct on himself.

1       3.10 The Complaint further alleges that over the course of the next two years Jackson  
2 continued to reach out to John Doe 1 via social media seeking pictures of John Doe 1's genitalia.  
3 The Underlying Complaint alleges, "John Doe 1 did not want to send Jackson photos of his  
4 genitals, but he also did not want to lose his employment opportunities with Sterling Athletics or  
5 jeopardize his playing time on the High School team."

6       3.11 John Doe 1 alleges that he suffered and continues to suffer extreme emotional  
7 distress, personal anguish, fear, humiliation, pain and suffering as a result of the sexual abuse  
8 perpetrated by Jacob Jackson and the sexual harassment, hostile work environment and gender-  
9 based discrimination he suffered at Sterling Athletics from its Chief Executive Officer.

10      3.12 Defendants John Doe 1, John Doe 2 and Jane Doe assert the following causes of  
11 action against Jacob Jackson: Violation of RCW 9.68A, sexual exploitation of Children, Sexual  
12 Assault, False Imprisonment, Outrage, and violation of RCW 4.24.010- Loss to the Parent Child  
13 Relationship.

14      3.13 Defendants John Doe 1, John Doe 2, and Jane Doe assert the following causes of  
15 action against Sterling Athletics: Violation of RCW 9.68A- sexual exploitation of Children,  
16 Outrage, Sexually Hostile Work Environment and Gender Based Harassment in violation of  
17 RCW 49.60, Gender based Discrimination in violation of Washington's Law Against  
18 Discrimination, Employment Discrimination – Sexual Harassment Quid Pro Quo, Negligence,  
19 and violation of RCW 4.24.010- Loss to the Parent Child Relationship.

20      3.14 John Doe 1 alleges in these causes of action that Sterling Athletics owed a duty of  
21 care to him as an employee, to provide a workplace free of hostility, sexual harassment, and  
22 gender-based harassment.

1       3.15 John Doe 1 alleges a claim for general and special damages including, but not  
2 limited to, emotional distress, physical and mental pain and suffering, medical expenses, lost  
3 wages, diminution of his earning capacity, a decrease in his ability to enjoy life, and other  
4 general and special damages.

5           **B. Primary Commercial General Liability Policies Issued by HCC**

6       3.16 HCC issued policies of insurance to Sterling under Policy Numbers H18PL30194-  
7 00 (eff. 08/23/18 – 08/23/19), H19PL30520-00 (eff. 08/23/19 – 08/23/20), H20PL30632-00 (eff.  
8 08/22/20 – 08/22/21), H21PL30632-01 (eff. 08/22/21 – 08/22/22), and H22PL30632-02 (eff.  
9 08/22/22 – 08/22/23).

10      3.17 HCC has agreed to defend Sterling and Mr. Jackson subject to a reservation of  
11 rights under the Policies.

12      The policies contained the following relevant provisions.:.

13           **SECTION I – COVERAGES**

14           **COVERAGE A BODILY INJURY AND PROPERTY  
DAMAGE LIABILITY**

15           **1. Insuring Agreement**

16       a. We will pay those sums that the insured  
17 becomes legally obligated to pay as damages  
18 because of “bodily injury” or “property damage”  
19 to which this insurance applies. We will have  
20 the right and duty to defend the insured against  
21 any “suit” seeking those damages. However,  
22 we will have no duty to defend the insured  
against any “suit” seeking damages for “bodily  
injury” or “property damage” to which this  
insurance does not apply. We may, at our  
discretion, investigate any “occurrence” and  
settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any “employee”

COMPLAINT FOR DECLARATORY RELIEF– 6  
CAUSE NO.

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authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

• • •

## 2. Exclusions

This insurance does not apply to:

**a.      Expected Or Intended Injury**

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury”

resulting from the use of reasonable force to protect persons or property.

3

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. **Employer's Liability**

“Bodily injury” to:

(1) An “employee” of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured’s business; or

(2) The spouse, child, parent, brother or sister of that “employee” as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury. This exclusion does not apply to liability assumed by the insured under an "insured contract".

... .

#### **o. Personal And Advertising Injury**

“Bodily injury” arising out of “personal and advertising injury”.

• • •

1                   **q. Distribution Of Material In Violation Of Statutes**

2                   “Bodily injury” or “property damage” arising  
3                   directly or indirectly out of any action or  
4                   omission that violates or is alleged to violate:

5                   ...

6                   **(3) Any statute, ordinance or regulation, other than the**

7                   TCPA or CAN-SPAM Act of 2003, that prohibits or  
8                   limits the sending, transmitting, communicating or  
9                   distribution of material or information.

10                  Further, the Policy also includes an Employment-Related Practices Exclusion  
11                  endorsement (CG 21 47 12 07) further limiting the type of “bodily injury” for which there is  
12                  coverage:

13                  **EMPLOYMENT RELATED PRACTICES EXCLUSION**

14                  This endorsement modifies insurance provided under the  
15                  following:

16                  **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

17                  **A. The following exclusion is added to Paragraph 2.,  
18                   Exclusions of Section I – Coverage A – Bodily  
19                   Injury And Property Damage Liability:**

20                  This insurance does not apply to:

21                  “Bodily injury” to:

22                  **(1) A person arising out of any:**

23                  **(a) Refusal to employ that person;**

24                  **(b) Termination of that person’s employment;  
25                   or**

26                  **(c) Employment-related practices, policies,  
27                   acts or omissions, such as coercion,**

1 demotion, evaluation, reassignment,  
2 discipline, defamation, harassment,  
3 humiliation, discrimination or malicious  
prosecution directed at that person; or

4 (2) The spouse, child, parent, brother or sister of  
5 that person as a consequence of “bodily injury”  
6 to that person at whom any of the employment  
related practices described in Paragraphs **(a)**,  
**(b)**, or **(c)** above is directed.

7 This exclusion applies:

8 (1) Whether the injury-causing event described in  
9 Paragraphs **(a)**, **(b)** or **(c)** above occurs before  
employment, during employment or after  
employment of that person;

10 (2) Whether the insured may be liable as an employer  
11 or in any other capacity; and

12 (3) To any obligation to share damages with or  
repay someone else who must pay damages  
because of the injury.

13

## 14 SECTION I – COVERAGES

15

### 16 COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

17

#### 18 1. Insuring Agreement

19 a. We will pay those sums that the insured  
20 becomes legally obligated to pay as damages  
21 because of “personal and advertising injury” to  
22 which this insurance applies. We will have the  
right and duty to defend the insured against  
any “suit” seeking those damages. However,  
we will have no duty to defend the insured  
against any “suit” seeking damages for  
“personal and advertising injury” to which this  
insurance does not apply. We may, at our

1 discretion, investigate any offense and settle  
2 any claim or “suit” that may result. But:

3           (1) The amount we will pay for damages is  
4 limited as described in Section III – Limits  
5 Of Insurance; and  
6           (2) Our right and duty to defend end when we  
7 have used up the applicable limit of  
8 insurance in the payment of judgments or  
9 settlements under Coverages A or B or  
10 medical expenses under Coverage C.  
11 No other obligation or liability to pay sums  
12 or perform acts or services is covered unless  
13 explicitly provided for under Supplementary  
14 Payments – Coverages A and B.  
15           b. This insurance applies to “personal and  
16 advertising injury” caused by an offense arising  
17 out of your business but only if the offense was  
18 committed in the “coverage territory” during the  
19 policy period.

20 The Commercial General Liability Coverage Form (CG 00 01 12 07) also contains the  
21 following exclusions under Coverage B:

22           **2. Exclusions**

23           This insurance does not apply to:

16           a. **Knowing Violation Of Rights Of Another**  
17           “Personal and advertising injury” caused by or  
18 at the direction of the insured with the  
19 knowledge that the act would violate the rights  
of another and would inflict “personal and  
advertising injury”.  
20           ...

21           d. **Criminal Acts**

22           “Personal and advertising injury” arising out of  
23 a criminal act committed by or at the direction  
of the insured.

1           ...

2           **p. Distribution Of Material In Violation Of Statutes**

3           “Personal and advertising injury” arising directly or  
4           indirectly out of any action or omission that violates or is  
5           alleged to violate:

6           ...

7           (3) Any statute, ordinance or regulation, other  
8           than the TCPA or CAN-SPAM Act of 2003,  
9           that prohibits or limits the sending,  
10          transmitting, communicating or distribution  
11          of material or information.

12          As noted above, the Policy includes an Employment-Related Practices Exclusion  
13          endorsement (CG 21 47 12 07). This endorsement also limits the type of “personal and  
14          advertising injury” for which there may be coverage:

15          **EMPLOYMENT-RELATED PRACTICES EXCLUSION**

16          This endorsement modifies insurance provided under the  
17          following:

18          **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

19           ...

20          B. The following exclusion is added to Paragraph 2.,  
21          **Exclusions of Section I – Coverage B – Personal And  
22          Advertising Injury Liability:**

23          This insurance does not apply to:

24          “Personal and advertising injury” to:

25           (1) A person arising out of any:

26               (a) Refusal to employ that person;

27               (b) Termination of that person’s employment;  
28               or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of “personal and advertising injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

The following additional provisions of the Commercial General Liability Coverage Form (CG 00 01 12 07) are applicable:

## **SECTION II – WHO IS AN INSURED**

1. If you are designated in the Declarations as:

•

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your

1 stockholders are also insureds, but only with  
2 respect to their liability as stockholders.  
3 ...  
4

5 2. Each of the following is also an insured:  
6

7     a. Your “volunteer workers” only while performing  
8       duties related to the conduct of your business,  
9       or your “employees”, other than either your  
10      “executive officers” (if you are an organization  
11       other than a partnership, joint venture or limited  
12       liability company) or your managers (if you are  
13       a limited liability company), but only for acts  
14       within the scope of their employment by you or  
15       while performing duties related to the conduct  
16       of your business. However, none of these  
17       “employees” or “volunteer workers” are  
18       insureds for:

19       (1) “Bodily injury” or “personal and advertising  
20       injury”:

21           (a) To you, to your partners or members  
22           (if you are a partnership or joint  
23           venture), to your members (if you  
24           are a limited liability company), to a  
25           co-“employee” while in the course of  
26           his or her employment or performing  
27           duties related to the conduct of your  
28           business, or to your other “volunteer  
29           workers” while performing duties  
30           related to the conduct of your  
31           business;

32           (b) To the spouse, child, parent, brother  
33           or sister of that co-“employee” or  
34           “volunteer worker” as a consequence  
35           of Paragraph (1)(a) above;

36           (c) For which there is any obligation to  
37           share damages with or repay  
38           someone else who must pay damages  
39           because of the injury described in

1 Paragraphs **(1)(a)** or **(b)** above; or  
2 **(d)** Arising out of his or her  
3 providing or failing to provide  
4 professional health care services.  
5  
6 ...  
7

#### 4 SECTION V – DEFINITIONS 5

6 3. “Bodily injury” means bodily injury, sickness or  
7 disease sustained by a person, including death  
8 resulting from any of these at any time.  
9  
10 ...  
11

12 5. “Employee” includes a “leased worker”.  
13 “Employee” does not include a “temporary  
14 worker”.  
15  
16 ...  
17

18 6. “Executive officer” means a person holding any of  
19 the officer positions created by your charter,  
20 constitution, by-laws or any other similar governing  
21 document.  
22  
23 ...  
24

25 10. “Leased worker” means a person leased to you by  
26 a labor leasing firm under an agreement between  
27 you and the labor leasing firm, to perform duties  
28 related to the conduct of your business. “Leased  
29 worker” does not include a “temporary worker”.  
30  
31 ...  
32

33 13. “Occurrence” means an accident, including  
34 continuous or repeated exposure to substantially  
35 the same general harmful conditions.  
36  
37 ...  
38

39 14. “Personal and advertising injury” means injury,  
40 including consequential “bodily injury”, arising out  
41 of one or more of the following offenses:  
42  
43 a. False arrest, detention or imprisonment;  
44  
45 ...  
46

1           e.     Oral or written publication, in any manner, of  
2           material that violates a person's right of  
3           privacy;  
4           ...  
5

6           **19.**    “Temporary worker” means a person who is  
7           furnished to you to substitute for a permanent  
8           “employee” on leave or to meet seasonal or short-term  
9           workload conditions.

10          **20.**    “Volunteer worker” means a person who is not  
11        your “employee”, and who donates his or her work  
12        and acts at the direction of and within the scope of  
13        duties determined by you, and is not paid a fee,  
14        salary or other compensation by you or anyone  
15        else for their work performed for you.  
16          ...  
17

#### **DEFINITION OF EMPLOYEE AMENDMENT**

18          This endorsement modifies insurance provided under the  
19        following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

20          Section **V – Definitions**, 5. “Employee” is deleted and replaced by  
21        the following:

22          5.     “Employee” includes “leased worker” and “temporary  
23        worker”.

24          Additionally, the 2018-2019 Policy also includes an Amendatory Endorsement pertaining  
25        to the definition of “personal and advertising injury.” The Endorsement is on form HPC 040 06  
26        03 13 which states:  
27

#### **INTELLECTUAL PROPERTY AMENDMENT**

28          This endorsement modifies insurance provided under the  
29        following:

1  
2 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
3

4  
5 I. With respect to the coverage provided by this endorsement,  
6 Item 14. of SECTION V – DEFINITIONS is deleted in  
7 its entirety and replaced with the following:  
8

9  
10 14. “Personal and advertising injury” means injury  
11 including consequential “bodily injury” arising  
12 out of one or more of the following offenses:  
13

14  
15 a. False arrest, detention or imprisonment;  
16 ...  
17 e. Oral or written publication of material that  
18 violates a person’s right of privacy.  
19

20 Policy H19PL30520-00, with an effective date of August 23, 2019 to August 23, 2020,  
21 includes the following additional Endorsement on form CG 21 07 05 14 affecting the available  
22 coverage:  
23

24 EXCLUSION – ACCESS OR DISCLOSURE OF  
25 CONFIDENTIAL OR  
26 PERSONAL INFORMATION AND DATA-RELATED  
27 LIABILITY –  
28 LIMITED BODILY INJURY EXCEPTION NOT INCLUDED

29 This endorsement modifies insurance provided under the  
30 following:  
31

32 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
33

34 A. Exclusion 2.p. of Section 1 – Coverage A – Bodily Injury  
35 And Property Damage Liability is replaced by the  
36 following:  
37

38 2. Exclusions  
39

40 This insurance does not apply to:  
41

42  
43 COMPLAINT FOR DECLARATORY RELIEF– 17  
44 CAUSE NO.

45  
46 3406954 / 539.0022

47  
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53

1                   **p. Access or Disclosure of Confidential Or**  
2                   **Personal Information and Data-related**  
3                   **Liability**

4                   Damages arising out of:

5                   (1) Any access to or disclosure of any person's  
6                   or organization's confidential or personal  
7                   information, including patents, trade secrets,  
8                   processing methods, customer lists, financial  
9                   information, credit card information, health  
10                  information or any other type of nonpublic  
11                  information; or  
12                    
13                  (2) The loss of, loss of use of, damage to,  
14                  corruption of, inability to access, or inability  
15                  to manipulate electronic data.

16                  This exclusion applies even if damages are claimed for notification  
17                  costs, credit monitoring expenses, forensic expenses, public  
18                  relations expenses or any other loss, cost or expense incurred by  
19                  you or others arising out of that which is described in Paragraph  
20                  (1) or (2) above.

21                  As used in this exclusion, electronic data means information, facts  
22                  or programs stored as or on, created or used on, or transmitted to or  
23                  from computer software, including systems and applications  
24                  software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data  
25                  processing devices or any other media which are used with  
26                  electronically controlled equipment.

27                  **B. The following is added to Paragraph 2. Exclusions of Section I**  
28                  **- Coverage B – Personal And Advertising Injury Liability:**

29                  **2. Exclusions**

30                  This insurance does not apply to:

31                  **Access Or Disclosure Of Confidential Or Personal Information**

32                  “Personal and advertising injury” arising out of any access to or  
33                  disclosure of any person's or organization's confidential or  
34                  personal information, including patents, trade secrets, processing

1 methods, customer lists, financial information, credit card  
2 information, health information or any other type of nonpublic  
information.

3 This exclusion applies even if damages are claimed for notification  
4 costs, credit monitoring expenses, forensic expenses, public  
relations expenses or any other loss, cost or expense incurred by  
5 you or others arising out of any access to or disclosure of any  
person's or organization's confidential or personal information

6 Policy H20PL30632-00, with an effective date of August 22, 2020 to August 22, 2021,  
7 includes the following additional Endorsement on form HPC 050 33 05 18 which may also affect  
8 coverage under the Commercial General Liability Policy:

#### 9 EXCLUSION – ATHLETIC OR SPORTS PARTICIPANT

10 This endorsement modifies insurance provided under the  
following:

#### 11 COMMERCIAL GENERAL LIABILITY COVERAGE PART

12 The following exclusion is added to paragraph **2. Exclusions** of  
13 **Section I – Coverage A – Bodily Injury and Property Damage**  
**Liability:**

#### 14 Athletic or Sports Participants

15 This insurance policy does not apply to any actual or  
16 alleged liability arising out of, based upon, or related in any  
way, either directly or indirectly, to "bodily injury" or  
17 "property damage" to any person while:

- 18 1. Practicing for;
- 19 2. Participating in;
- 20 3. Officiating at; or
- 21 4. In the course of travel to or from any sport or  
athletic competition, contest or exhibition sponsored  
22 or hosted by any insured.

1 In addition, Policy H20PL30632-00 (eff. 8/22/20-8/22/21) also includes the following  
2 Endorsement on form HPC 050 38 06 18 which states:

3 **EXCLUSION – PROFESSIONAL SERVICES**

4 This endorsement modifies insurance provided under the  
5 following:

6 COMMERCIAL GENERAL LIABILITY COVERAGE PART

7 The following exclusion is added to paragraph 2. **Exclusions of**  
8 **Section I – Coverage A – Bodily Injury And Property Damage**  
9 **Liability** and paragraph 2. **Exclusions of Section I - Coverage B**  
– **Personal And Advertising Injury**:

10 **Professional Services**

11 This policy does not apply to any actual or alleged “bodily injury”,  
12 “property damage”, “personal injury” or “advertising injury”  
13 arising out of, or based upon, or related in any way, either directly  
or indirectly, to the rendering of or failure to render professional  
services.

14 Professional services include, but are not limited to:

15 ...

16 (8) Any service, treatment, advice or instruction relating to  
17 physical fitness, including service, treatment, advice or  
instruction in connection with diet, cardiovascular fitness,  
bodybuilding or physical training programs;

18 ...

19 This exclusion applies even if the claims against any insured allege  
20 negligence or other wrongdoing in the supervision, hiring,  
employment, training or monitoring of others by that insured, if the  
21 accident which caused the “injury or damage”, involved the  
rendering of or failure to render professional services.

1 Policy H20PL30632-00 (eff. 8/22/20-8/22/21) also includes the Manufacturers “Core 25”  
2 Coverage Enhancement Package Endorsement on form HPC 040 44 05 18. This Endorsement  
3 states:

4 This endorsement modifies insurance provided under the following:

5 COMMERCIAL GENERAL LIABILITY COVERAGE PART

6 It is understood and agreed that this endorsement amends the  
7 COMMERCIAL GENERAL LIABILITY COVERAGE PART.  
8 The changes this endorsement makes do not apply with respect to  
any coverage that has been excluded or amended by another  
endorsement attached to this policy.

9 ...

10 **SECTION I – COVERAGE AMENDMENTS**

11 **1. Expected or Intended Injury**

12 Under **SECTION I – COVERAGE A – BODILY**  
**INJURY AND PROPERTY DAMAGE LIABILITY**,  
13 paragraph **2. Exclusions** is amended to delete exclusion **a.**  
**Expected or Intended Injury** and replace it with the  
14 following:

15 This insurance does not apply to:

16 **a. Expected or Intended Injury**  
17 “Bodily injury” or “property damage”  
18 expected or intended from the standpoint of  
the insured. This exclusion does not apply to  
“bodily injury” or “property damage”  
19 resulting from the use of reasonable force to  
protect persons or property

20 ...

21 **SECTION II – WHO IS AN INSURED AMENDMENTS**

22 **8. Co-Employees**

Under **SECTION II – WHO IS AN INSURED**, the following language is added to paragraph **2.a.1**:

Paragraph (a) and (b) do not apply to “bodily injury” or “personal and advertising injury” caused by a co-“employee” while in the course of his or her employment or performing duties related to the conduct of your business. This includes, but is not limited to, injury caused by a co-“employee” in his or her capacity as a supervisor based upon responsibilities to supervise other “employees” as assigned by you. However, none of these employees are insureds for “bodily injury” or “personal and advertising injury” arising out of their willful conduct, defined to include the purposeful or willful intent to cause such injury.

...

## **SECTION V – DEFINITIONS AMENDMENTS**

### **21. Definition of Bodily Injury**

Under **SECTION V – DEFINITIONS**, Definition **3.** is deleted and replaced by the following:

**3.**     **“Bodily injury”** means bodily injury, sickness, or disease sustained by a person, including the death of a person. “Bodily injury” also means mental anguish, mental injury, or shock, if directly resulting from physical injury, sickness, or disease to that person.

...

### **24. Definition of Personal and Advertising Injury**

Under **SECTION V – DEFINITIONS**, Definition **14.**, is amended by the addition of paragraph **h.**, which reads as follows:

- h.**     discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
  - (1)**     not done intentionally or at the direction of;

- (a) an insured;
- (b) any “executive officer,” director, stockholder, partner or member of the insured; and

(4) not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

### **C. Commercial Excess Policies**

3.18 HCC also issued Commercial Excess Liability Policies to Sterling as follows:

H18PX50098-00 (eff. 08/23/18 – 08/23/19); H19PX50267-00 (eff. 08/23/19 – 08/23/20);

H20PX50360-00 (eff. 08/20/20 – 08/22/21); H21PX50360-01 (eff. 08/22/21 – 08/22/22); and

H22PX50360-02 (eff. 08/22/22 – 08/22/23).

3.19 The Commercial Excess Liability Policies contain the following relevant provisions:

## **SECTION I – Excess Liability Insurance**

## **1. Insuring Agreement**

- a. We will pay those sums in excess of the limits shown in ITEM 7 of the Declarations, Schedule of Underlying Insurance, that you become legally obligated to pay as damages because of "injury or damage" to which this policy applies, provided that the "underlying insurance" also applies, or would apply but for the exhaustion of its applicable limits of insurance.
- b. This policy is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance", except:

- i. We will have no obligation under this policy with respect to any claim or “suit” that is settled without our written consent;
- ii. With respect to any provisions to the contrary contained in this policy; and
- iii. Under no circumstances will the coverage available under this policy be broader than any “underlying insurance”.

3

## **SECTION II – Exclusions**

The exclusions applicable to the “underlying insurance” also apply to this policy. In addition, this policy does not apply to:

• • •

## **8. Employment-Related Practices**

Any actual or alleged liability arising out of, based upon, or related in any way, either directly or indirectly, to:

•

- a.** Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b.** The spouse, child, parent, brother or sister of any person as a consequence of “injury or damage” to that person to whom any of the employment-related practices described in

1 Paragraphs **a.**, **b.** or **c.** above is  
2 directed.  
3

This exclusion applies:

4

- a.** Whether the injury-causing event described in  
5 Paragraphs **a.**, **b.** or **c.** above occurs before  
employment, during employment or after  
employment of that person;
- b.** Whether the insured may be liable as an employer  
7 or in any other capacity; and
- c.** To any obligation to share damages with or repay  
9 someone else who must pay damages  
because of the injury.

10                   ...

## **SECTION V – Definitions**

12 The definitions applicable to the “underlying insurance” also apply  
13 to this policy, except that the following definitions control the  
defined terms in this policy:  
14                   ...

15                   **5.** “Injury or damage” means any injury or damage covered  
16 under the applicable “underlying insurance” arising from  
an occurrence, offense, accident, act, error or omission or  
other event to which the “underlying insurance” applies.

## **IV. CAUSE OF ACTION**

### **A. Declaratory Relief: No Duty to Defend or Indemnify**

20                  **4.1** Plaintiff reasserts and re-alleges the allegations in each of the foregoing  
21 paragraphs as fully set forth herein.

22                  **4.2** Sterling and Mr. Jackson seek coverage under certain policies issued by HCC for  
23 damages alleged in the Underlying Lawsuit.

1       4.3     There is an actual and justiciable controversy between Plaintiff and Defendants  
2 with respect to whether the General Liability Policies provide coverage for the claims asserted in  
3 the Underlying Lawsuit.

4       4.4     There is an actual and justiciable controversy between Plaintiff and Defendants  
5 with respect to whether the Excess Policies provide coverage for the claims asserted in the  
6 Underlying Lawsuit.

7       4.5     In accordance with the insuring agreement, provisions, terms, conditions,  
8 exclusions, and endorsements of the General Liability Policy and Excess Policy, HCC has no  
9 duty to defend or indemnify Defendants Sterling Athletics or Mr. Jackson under the Policies or  
10 applicable law, in whole or in part, for the following reasons:

- 11           a.    No coverage is afforded for the Underlying Lawsuit to the extent Mr. Jackson's  
12              and/or Sterling Athletics' accts or omissions alleged by Underlying Plaintiffs do  
13              not constitute an "occurrence" under the Policies.
- 14           b.    No coverage is afforded for the Underlying Lawsuit to the extent Underlying  
15              Plaintiff's alleged injuries are not "Bodily injury" as that term is defined in the  
16              Policies.
- 17           c.    No coverage is afforded for the Underlying Lawsuit for criminal or intentional  
18              actions of Mr. Jackson or Sterling Athletics.
- 19           d.    No coverage is afforded for the Underlying Lawsuit as the Policies exclude  
20              coverage for "Bodily injury" to an "employee" of Sterling Athletics, arising out of  
21              and in the course of employment or performing duties related to the conduct of  
22              Sterling's business and further exclude "bodily injury" to the parent of such  
23              employee.

- 1 e. No coverage is afforded for the Underlying lawsuit, as the Policies exclude  
2 “Bodily injury” arising out of employment -related practices, policies, acts or  
3 omissions.
- 4 f. No coverage is afforded for “bodily injury” or “personal and advertising injury”  
5 caused by a co-“employee” while in the course of his or her employment or  
6 performing duties related to the conduct of Sterling’s business.
- 7 g. Mr. Jackson is not an insured for “bodily injury” or “personal and advertising  
8 injury” arising out of his willful conduct, defined to include the purposeful or  
9 willful intent to cause such injury.
- 10 h. There is no coverage for intentional discrimination or humiliation that results in  
11 injury to the feelings or reputation of a natural person.
- 12 i. There is no coverage for “personal and advertising injury” arising out of any  
13 access to or disclosure of any person’s confidential or personal information.

14 4.6 Plaintiff also relies upon all additional terms, definitions, exclusions, conditions  
15 and endorsements in the Policies not specifically identified herein that potentially limit or  
16 preclude coverage to Defendants under the Policies for the Underlying Lawsuit.

17 4.7 Plaintiff seeks a declaration that its policies do not provide defense or indemnity  
18 for the claims made against Sterling and Jackson in the Underlying Lawsuit.

19 **V. PRAYER FOR RELIEF**

20 WHEREFORE, HCC prays for judgment against Defendants as follows:

21 5.1 That the Court determine, decree, and adjudge that HCC is entitled to a  
22 declaration that it has no duty to defend Sterling or Mr. Jackson in the Underlying Lawsuit under  
23 the General Liability and Umbrella Policies.

5.2 That the Court determine, decree, and adjudge that HCC is entitled to a declaration that it has no duty to indemnify Sterling or Mr. Jackson in the Underlying Lawsuit under the General Liability and Umbrella Policies.

5.3 That HCC has no continuing obligation to defend and may withdraw from defense of Sterling and/or Mr. Jackson.

#### 5.4 For attorneys' fees and costs.

5.5 For costs of suit incurred herein.

5.6 For such other and further relief as the Court deems fit and proper under the circumstances and evidence.

DATED this 8<sup>th</sup> day of February, 2023.

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COMPLAINT FOR DECLARATORY RELIEF– 28  
CAUSE NO.

3406954 / 539.0022

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